



January 31, 2019

The Honorable David Whitley
Texas Secretary of State
P.O. Box 12887
Austin, TX 78711

Via email: secretary@sos.texas.gov

Dear Secretary Whitley,

We write to follow up with you about concerns we recently expressed to you regarding Election Advisory No. 2019-02, dated January 25, 2019 (“the Advisory”), relating to the use of DPS data to attempt to identify non-citizen registered voters. Specifically, in our January 28, 2019 letter to you (“the Letter”), we noted flaws in the methodology you used to create a list of registered Texas voters who may not be US citizens (“the Purge List”) and to urge you to rescind the Advisory before counties took any action on the Purge List. ***We write now to 1) renew our demand that you rescind the Advisory, 2) demand that you instruct all counties that have sent notices to individuals on the basis of your purge list to immediately retract such notices and cease sending out any further notices, and 3) demand that any guidance provided to counties, whether supplemental to the initial Advisory or otherwise, be communicated in writing and available to the public for their review.***

As of this writing, you have neither rescinded the Advisory, nor responded substantively to any of the concerns we expressed in the Letter about the inherently flawed methodology you used to create the Purge List.¹ Yet you have apparently shared with some county election officials concerns similar to ours about the accuracy of the data--namely that a “significant” number of people listed on the Purge

¹ We are in receipt of your letter dated January 30, 2019, in which you acknowledged receipt of our Letter and explained that you “anticipate providing a more detailed response . . . within the next week.”

List are likely US citizens--and have given these counties new guidance on how to proceed.² Further, according to news reports, you distributed this updated guidance only verbally and out of public view, instead of publishing a new written advisory that would ensure the process is transparent to the public and subject to uniform standards across the state.³

The consequences of this chain of reckless decisions are quickly manifesting. A rapidly growing share of the names on the Purge List appear to either be duplicates or identify US citizens--*not* foreign nationals who have registered and voted in Texas.⁴ Further, the lack of consistent and uniform standards has led Texas voters to be treated differently, merely depending on where they live. For instance, while some county election officials are taking no immediate action on the Purge List because of their justified concerns over the data,⁵ at least one county initially decided to automatically send out notices demanding proof of citizenship to voters on the Purge List.⁶

We urge you to stop this process immediately, before it further endangers any Texan's right to vote. Once again, we demand that you rescind the Advisory, all the more so as the exact concerns we warned you of in the Letter have begun to unfold. We also further demand that you instruct all counties that have sent notices to individuals on the basis of your purge list to immediately retract such notices, cease sending out any further notices, and that any guidance provided to counties, whether supplemental to the initial Advisory or otherwise, be communicated in writing and available to the public for their review. Ultimately, the right to vote is at stake in this process, and Texans deserve better than to have their rights evaluated behind closed doors according to secret standards applied differently across the state.

Please advise by the close of business today, Thursday, January 31, 2019, whether you intend to take the steps we have outlined above, and any additional steps you intend to take on this matter.

² See Alexa Ura, *Texas Quietly Informs Counties That Some of the 95,000 Voters Flagged For Citizenship Review Don't Belong on the List*, Tex. Tribune (Jan. 29, 2019), <https://www.texastribune.org/2019/01/29/texas-voter-citizenship-list-problems-state-tells-counties/>.

³ *Id.*

⁴ See Sam Levine, *Texas Officials Say There Are Errors In List Of Suspected Noncitizen Voters*, Huffington Post (Jan. 29, 2019), https://www.huffingtonpost.com/entry/texas-voter-fraud-list-errors_us_5c50c965e4b00906b26e47f8?ysm; Travis County Tax Assessor-Collector & Voter Registrar, *Fact Sheet: Travis County Non-U.S. Citizen Data Obtained From the Texas Secretary of State and the Department of Public Safety* (Jan. 30, 2019), https://tax-office.traviscountytexas.gov/images/tax_assessor/pdfs/voters/NonCitizenDataFactSheet.pdf.

⁵ See, e.g., Travis County Tax Assessor-Collector & Voter Registrar, *Fact Sheet*, *supra* note 3.

⁶ See, e.g., Brooke A. Lewis, *County Officials Removing Some Names from Flagged Voter Lists*, Houston Chronicle (Jan. 29, 2019), https://m.chron.com/neighborhood/galveston/news/article/Galveston-County-sends-out-letters-as-part-of-13570592.php?utm_campaign=twitter#photo-16440294.

Sincerely,

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